PATRICE CLEMONS,

              Plaintiff,

    v.

CAMDEN COUNTY,

              Defendant.

HONORABLE JEROME B. SIMANDLE

Civil Action
No. 16-cv-08091(JBS-AMD)

OPINION

APPEARANCES:

Patrice Clemons, Plaintiff Pro Se
2910 Thompson Street
Camden, NJ 08105

SIMANDLE, Chief District Judge:

1.   Plaintiff Patrice Clemons seeks to bring a civil rights complaint pursuant to 42 U.S.C. § 1983 against Camden County for allegedly unconstitutional conditions of confinement in the Camden County Jail. Complaint, Docket Entry 1.

2.   28 U.S.C. § 1915(e)(2) requires courts to review complaints prior to service in cases in which a plaintiff is proceeding *in forma pauperis*. Courts must *sua sponte* dismiss any claim that is frivolous, is malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. This action is subject to *sua sponte* screening for dismissal under 28 U.S.C. § 1915(e)(2)(B) because Plaintiff is proceeding *in forma pauperis*.

3.   For the reasons set forth below, the Court will dismiss the Complaint without prejudice for failure to state a claim. 28 U.S.C. § 1915(e)(2)(b)(ii).

4.   To survive *sua sponte* screening for failure to state a claim, a complaint must allege "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMS Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 308 n.3 (3d Cir. 2014). "[A] pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

5.   The Complaint alleges that Plaintiff experienced unconstitutional conditions of confinement during detention at the Camden County Jail on "June 1, 2015." Complaint § III(C). Plaintiff states: "I was forced to sleep in a room with 5 people [in] very poor condition." *Id*. § III(C).

6.   The Complaint alleges that Plaintiff contracted a "staph infection" while incarcerated. *Id.* § IV.

2

7.   With respect to requested relief, Plaintiff seeks "compensation and damages." *Id*. § V.[1]

8.   Even accepting these statements as true for screening purposes only, there is not enough factual support for the Court to infer a constitutional violation has occurred.

---

[1] Given that Plaintiff also "want[s] State see that the County Jail is in very poor conditions" (Complaint § V), the Court advises Plaintiff that she is one of thousands of members of a certified class in the case on this Court's docket entitled, *Dittimus-Bey v. Camden County Correctional Facility*, Civil No. 05-cv-0063 (JBS), which is a class action case. The class plaintiffs are all persons confined at the CCCF, as either pretrial detainees or convicted prisoners, at any time from January 6, 2005, until the present time. The class of plaintiffs seek injunctive and declaratory relief about unconstitutional conditions of confinement at the CCCF involving overcrowding. That class action does not involve money damages for individuals. A proposed final settlement of that case, which describes the settlement in detail, was preliminarily approved on February 22, 2017. At present, various measures already undertaken in the Second and Third Consent Decrees under Court approval have reduced the jail population to fewer prisoners than the intended design capacity for the jail. This has greatly reduced or eliminated triple and quadruple bunking in two-person cells, as explained in the proposed Sixth and Final Consent Decree, which would continue those requirements under Court supervision for two more years. According to the Notice to all class members that was approved in the *Dittimus-Bey* case on February 22, 2017, any class member can object to the proposed settlement by filing an objection in the *Dittimus-Bey* case before April 24, 2017. A final Court hearing is set for May 23, 2017, at which any objections will be considered. If the *Dittimus-Bey* settlement is finally approved after the May 23rd hearing, Plaintiff and other class members will be barred from seeking injunctive or declaratory relief for the period of time from January 6, 2005, until the date of final approval, but the settlement does not bar any individual class member from seeking money damages in an individual case.

9.   Even construing the Complaint to allege
unconstitutional conditions of confinement arising from
purported overcrowding that led to Plaintiff's "sleep[ing] in a
room with 5 people" (Complaint § III(C)), the mere fact that an
individual is lodged temporarily in a cell with more persons
than its intended design does not rise to the level of a
constitutional violation. *See Rhodes v. Chapman*, 452 U.S. 337,
348–50 (1981) (holding double-celling by itself did not violate
Eighth Amendment); *Carson v. Mulvihill*, 488 F. App'x 554, 560
(3d Cir. 2012) ("[M]ere double-bunking does not constitute
punishment, because there is no 'one man, one cell principle
lurking in the Due Process Clause of the Fifth Amendment.'"
(quoting *Bell v. Wolfish*, 441 U.S. 520, 542 (1979))). More is
needed to demonstrate that such crowded conditions, for a
pretrial detainee, shocks the conscience and thus violates due
process rights. *See Hubbard v. Taylor*, 538 F.3d 229, 233 (3d
Cir. 2008) (noting due process analysis requires courts to
consider whether the totality of the conditions "cause inmates
to endure such genuine privations and hardship over an extended
period of time, that the adverse conditions become excessive in
relation to the purposes assigned to them."). Some relevant
factors are the dates and length of the confinement(s), whether
Plaintiff was a pretrial detainee or convicted prisoner, etc.

10.   There are also not enough facts for the Court to infer
Plaintiff was denied adequate medical care. In order to set
forth a cognizable claim for violation of the right to adequate
medical care, an inmate must allege: (1) a serious medical need;
and (2) behavior on the part of prison officials that
constitutes deliberate indifference to that need. *See Estelle v.
Gamble*, 429 U.S. 97, 106 (1976); *Natale v. Camden Cnty. Corr.
Facility*, 318 F.3d 575, 582 (3d Cir. 2003). A mere assertion
that Plaintiff "was unable to seek medical attention for almost
17 hours" (Complaint § IV) is insufficient to meet the pleading
standard in the absence of any facts. If Plaintiff wishes to
pursue this claim, Plaintiff should provide facts in an amended
complaint supporting both of the requirements of a claim of
inadequate medical care.

11.   In the event Plaintiff files an amended complaint, he
should include specific facts, such as the dates and length of
his confinement, whether he was a pretrial detainee or convicted
prisoner, any specific individuals who were involved in creating
or failing to remedy the conditions of confinement, and any
other relevant facts regarding the conditions of confinement.

12.   Moreover, Plaintiff has not pled sufficient facts to
impose liability on Camden County. "There is no *respondeat
superior* theory of municipal liability, so a city may not be
held vicariously liable under § 1983 for the actions of its

5

agents. Rather, a municipality may be held liable only if its
policy or custom is the 'moving force' behind a constitutional
violation." *Sanford v. Stiles*, 456 F.3d 298, 314 (3d Cir. 2006)
(citing *Monell v. N.Y.C. Dep't of Social Services*, 436 U.S. 658,
691 (1978)). *See also Collins v. City of Harker Heights*, 503
U.S. 115, 122 (1992) ("The city is not vicariously liable under
§ 1983 for the constitutional torts of its agents: It is only
liable when it can be fairly said that the city itself is the
wrongdoer.").

13.   Plaintiff must plead facts showing that the relevant
Camden County policy-makers are "responsible for either the
affirmative proclamation of a policy or acquiescence in a well-
settled custom." *Bielevicz v. Dubinon*, 915 F.2d 845, 850 (3d
Cir. 1990).[2] In other words, Plaintiff must set forth facts
supporting an inference that Camden County itself was the
"moving force" behind the alleged constitutional violation.
Monell, 436 U.S. at 689.

---

[2] "Policy is made when a decisionmaker possess[ing] final
authority to establish municipal policy with respect to the
action issues an official proclamation, policy, or edict.
Government custom can be demonstrated by showing that a given
course of conduct, although not specifically endorsed or
authorized by law, is so well-settled and permanent as virtually
to constitute law." *Kirkland v. DiLeo*, 581 F. App'x 111, 118 (3d
Cir. 2014) (internal quotation marks and citations omitted)
(alteration in original).

14.   As Plaintiff may be able to amend the Complaint to address the deficiencies noted by the Court, the Court shall grant Plaintiff leave to amend the Complaint within 30 days of the date of this order.

15.   Plaintiff should note that when an amended complaint is filed,[3] the original complaint no longer performs any function in the case and cannot be utilized to cure defects in the amended complaint, unless the relevant portion is specifically incorporated in the new complaint. 6 Wright, Miller & Kane, Federal Practice and Procedure 1476 (2d ed. 1990) (footnotes omitted). An amended complaint may adopt some or all of the allegations in the original complaint, but the identification of the particular allegations to be adopted must be clear and explicit. *Id.* To avoid confusion, the safer course is to file an amended complaint that is complete in itself. *Id.*

16.   For the reasons stated above, the Complaint is dismissed without prejudice for failure to state a claim. The Court will reopen the matter in the event Plaintiff files an amended complaint within the time allotted by the Court.

---

[3] The amended complaint shall be subject to screening prior to service.

17. An appropriate order follows.

April 7, 2017   s/ Jerome B. Simandle
Date   JEROME B. SIMANDLE
                                            Chief U.S. District Judge